THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.494 OF 2007

05th JANUARY, 2007.

Between:

Smt. P. Sarada .. petitioner.

And

1. Union of India, Ministry of Finance,
   (Department of Economic Affairs),
   New Delhi, rep. by its Secretary
   to Government and another. .. Respondents

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ORDER:

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The petitioner having availed a loan from the 2nd respondent, committed default in repayment of the debt. Consequently, the 2nd respondent invoked the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act') and issued a demand notice under Section 13 (2) of the Act on 15-11-2005 followed by possession notice. Thereafter, possession of the secured assets was taken and the same was also sold.

This writ petition is filed alleging that the petitioner was not served with any notice at any point of time with regard to the alleged steps taken under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Even the sale of the secured asset said to have been conducted by the 2nd respondent has been disputed stating that the premises in question is in possession of a tenant who still continues in occupation. It is pleaded that the petitioner came to know about the alleged proceedings only from a Reply notice dated 2-12-2006 issued by the 2nd respondent.

Hence, this writ petition seeking a declaration that the action of the 2nd respondent is arbitrary and illegal.

As can be seen, the matter involves several disputed questions of fact which cannot be enquired into and decided by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

Under Section 17 of the Act any person aggrieved by any of the measures referred in sub-section (4) of Section 13 taken by the

secured creditor, may make an application before the Debts Recovery Tribunal having jurisdiction. Since according to the 2nd respondent, the secured asset has already been sold if the petitioner is aggrieved the appropriate course is to avail the remedy under Section 17 of the Act.

Accordingly, granting leave and liberty to the petitioner, the Writ Petition is disposed of. No costs.

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(G. ROHINI, J.)

05-01-2007
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